

# *WISCONSIN ADMINISTRATIVE REGISTER*

**No. 533**



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## EMERGENCY RULES NOW IN EFFECT

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*Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.*

*Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.*

*Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.*

*Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.*

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### EMERGENCY RULES NOW IN EFFECT (2)

#### Commerce

##### (PECFA – Chs. Comm 46–47)

1. Rules adopted creating **ch. Comm 46**, relating to “Petroleum Environmental Cleanup Fund Interagency Responsibilities,” and relating to site contaminated with petroleum products from petroleum storage tanks.

#### Exemption From Finding of Emergency

On September 22, 1999, the Joint Committee for Review of Administrative Rules adopted a motion pursuant to s. 227.26 (2) (b), Stats., that directs the Departments Commerce and Natural Resources to promulgate as an emergency rule, no later than October 22, 1999, the policies and interpretations under which they intend to administer and implement the shared elements of the petroleum environmental cleanup fund program.

In administering the fund, the Departments had previously relied upon a Memorandum of Understanding for classifying contaminated sites and addressing other statements of policy that affect the two Departments. The rule that is being promulgated details the policies and interpretations under which the agencies intend to administer and guide the remedial decision making for sites with petroleum product contamination from petroleum product storage tank systems.

The rule defines “high priority site,” “medium priority site,” and “low priority site,” and provides that the Department of Natural Resources has authority for high priority sites and that the Department of Commerce has authority for low and medium priority sites. The rule requires transfer of authority for sites with petroleum contamination in the groundwater below the enforcement standard in ch. NR 140 from the Department of Natural Resources to the Department of Commerce. The rule also establishes

procedures for transferring sites from one agency to the other when information relevant to the site classification becomes available.

**Publication Date:** October 20, 1999  
**Effective Date:** October 20, 1999  
**Expiration Date:** March 18, 2000  
**Hearing Date:** November 18, 1999  
**Extension Through:** May 16, 2000

2. Rules adopted amending **s. Comm 47.53**, relating to appeals of decisions issued under the Petroleum Environmental Cleanup Act (PECFA) program.

#### Finding of Emergency

The Department of Commerce finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The department is receiving funds from a bonding initiative to enable it to issue approximately 3,500 decisions on applications for PECFA funding which had been awaiting the availability of funding. Because these decisions will be issued over a very short time frame, parties receiving decisions and law firms representing them, will be required to review and analyze a large volume of decisions to determine whether they wish to appeal specific departmental decisions. Given the large number of decisions and the normal rate of appeals, it is reasonable to expect that the public will be required to prepare and file a large volume of appeals within a short time period. Attorneys, lenders and consultants representing multiple claimants have expressed concern about the workload associated with having to review decisions and draft appeals on the higher volume of decisions issued by the department within the current 30 day window. The emergency rule temporarily expands the filing period from 30 days to 90 days to provide additional time to evaluate decisions and determine whether an appeal should be filed. The rule covers the time period when the highest volume of decisions are to be issued.

**Publication Date:** February 15, 2000  
**Effective Date:** February 15, 2000  
**Expiration Date:** July 14, 2000  
**Hearing Date:** March, 27, 2000

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### EMERGENCY RULES NOW IN EFFECT

#### Crime Victims Rights Board

Rules adopted creating **ch. CVRB 1**, relating to the rights of crime victims.

#### Finding of Emergency

The Crime Victims Rights Board finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The Crime Victims Rights Board was created by 1997 Wis. Act 181, effective December 1, 1998, to enforce victims’ rights established by Wis. Const. Art. I, s. 9m, adopted in 1993. The Wisconsin Constitution states that the Legislature shall provide remedies for the violation of victims’ constitutional rights. The Board’s process represents the only means of enforcing the remedies

available to victims of crime who are not provided with the rights guaranteed to them by the Wisconsin Constitution and the Wisconsin statutes. The Board can issue reprimands to correct violations of victims' rights, seek forfeitures in egregious cases, and seek equitable relief to enforce victims' rights. The Board can also work to prevent future violations of victims' rights by issuing reports and recommendations on crime victims' rights and services.

Complaints must be presented to the Department of Justice before they can be presented to the Board. The Department estimates that it receives 200 complaints annually involving the treatment of crime victims. The Department has no authority to enforce victims' rights; the Department can only seek to mediate disputes. Of those complaints, approximately 25 per year cannot be resolved to the parties' satisfaction, and are therefore ripe for the Board's consideration. There are presently 5 complaints that could be referred to the Board if the Board were able to receive and act on complaints.

Until the Board establishes its complaint process by administrative rule, it is unable to provide the remedies constitutionally guaranteed to crime victims.

**Publication Date:** September 17, 1999  
**Effective Date:** September 17, 1999  
**Expiration Date:** February 14, 1999  
**Hearing Date:** November 9, 1999  
**Extension Through:** June 12, 2000

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## EMERGENCY RULES NOW IN EFFECT

### *Employee Trust Funds*

Rules adopted revising s. ETF 20.25 (1), relating to the distribution to annuitants from the transaction amortization account to the annuity reserve under 1999 Wis. Act 11.

### Finding of Emergency

The Department of Employee Trust Funds, Employee Trust Fund Board, Teacher Retirement Board and Wisconsin Retirement Board find that an emergency exists and that administrative rules are necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

The Public Employee Trust Fund was created for the purpose of helping public employees to protect themselves and their beneficiaries against the financial hardships of old age, disability, death, illness and accident. The Trust Fund thus promotes economy and efficiency in public service by facilitating the attraction and retention of competent employees, by enhancing employee morale, by providing for the orderly and humane departure from service of employees no longer able to perform their duties effectively, and by establishing equitable benefit standards throughout public employment. There are approximately 102,000 annuitants of the Wisconsin Retirement System, of whom about 80% reside throughout the State of Wisconsin. The Department of Employee Trust Funds estimates that up to 7,000 public employees covered by the Wisconsin Retirement System will retire and take annuity benefits effective during 1999.

WRS participants who retire during 1999 are not eligible to have their retirement benefits calculated using the higher formula factors for pre-2000 service which are provided by the treatment of Wis. Stats. 40.23 (2m) (e) 1. through 4. by 1999 Wis. Act 11. Section 27 (b) 2. of the Act directs that any funds allocated to the employer reserve in the Trust Fund as a result of the \$4 billion transfer mandated by the Act, which exceed \$200,000,000 shall be applied towards funding any liabilities created by using the higher formula factors with respect to pre-2000 service.

If the existing administrative rule mandating proration is not revised, then the distribution of the funds transferred into the annuity reserve by Act s. 27 (1) (a) of 1999 Wis. Act 11 will be prorated with respect to annuities with effective dates after December 31, 1998, and before January 1, 2000. The extraordinary transfer of funds from the Transaction Amortization Account (TAA) mandated by 1999 Wis. 11 causes funds, which would otherwise have remained in the TAA to be recognized and fund annuity dividends in later years, to instead be transferred into the annuity reserve in 1999 and paid out as an annuity dividend effective April 1, 2000. Normally, annuities effective during 1999 would receive only a prorated dividend. If this occurred with respect to this extraordinary distribution, then annuitants with annuity effective dates in 1999 would be deprived of a portion of the earnings of the Public Employee Trust Fund that would otherwise have affected their annuities as of April 1, 2001 and in subsequent years.

Promulgation of an emergency rule is the only available option for revising the effect of Wis. Adm. Code s. ETF 20.25 (1) before December 31, 1999. Accordingly, the Department of Employee Trust Funds, Employee Trust Funds Board, Teacher Retirement Board and Wisconsin Retirement Board conclude that preservation of the public welfare requires placing this administrative rule into effect before the time it could be effective if the Department and Boards were to comply with the scope statement, notice, hearing, legislative review and publication requirements of the statutes.

**Publication Date:** December 27, 1999  
**Effective Date:** December 31, 1999  
**Expiration Date:** May 29, 2000  
**Hearing Date:** February 11, 2000

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## EMERGENCY RULES NOW IN EFFECT

### *Department of Financial Institutions* **Division of Securities**

Rules adopted revising s. DFI-Sec 5.01 (4), relating to investment adviser representative competency examination grandfathering provisions.

### Finding of Emergency and Analysis

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows:

The Division recently adopted for January 1, 2000 effectiveness as part of its annual rule revision process for 1999, a new administrative rule in s. DFI-Sec 5.01(3) that prescribes a new examination requirement for investment advisers and investment adviser representatives seeking licensure in Wisconsin on or after January 1, 2000. That new examination requirement, which includes completely revised Series 65 and Series 66 examinations, was developed over a 3-year period by a Project Group of the North American Securities Administrators Association ("NASAA").

The new NASAA examination requirement (which also included certain "grandfathering"/examination-waiver provisions) was approved by vote of NASAA member states (including Wisconsin) at the NASAA 1999 Spring Conference to become effective on December 31, 1999. The NASAA membership vote was accompanied by a recommendation that for uniformity purposes, each NASAA member state complete the necessary steps to adopt and have effective by January 1, 2000, the new examination requirement conforming to the NASAA format in all respects.

Following the adoption on November 18, 1999 by the Division of the new investment adviser examination requirement in s. DFI-Sec 5.01(3) as part of the Division's annual rule revision process, it was noted that the "grandfathering"/examination waiver



provisions that had been included in s. DFI–Sec 5.01(4) did not track the NASAA Model language in two respects.

Because it is critical that the grandfathering provisions for the new Wisconsin investment adviser examination requirement be uniform with those of the other NASAA member states as of the coordinated January 1, 2000 date so that applicants for licensing in Wisconsin receive equivalent treatment to that accorded them by other states in which they may be seeking licensure, this emergency rulemaking for January 1, 2000 effectiveness is necessary.

The emergency rulemaking action is comprised of two provisions which do the following: (1) provide an examination waiver in new section DFI–Sec 5.01(4)(e) for any applicant licensed as an investment adviser or investment adviser representative in any jurisdiction in the U.S. on January 1, 2000; and (2) provide an examination waiver in amended section DFI–Sec 5.01(4)(b) for any applicant that has been licensed as an investment adviser or investment adviser representative in any jurisdiction in the U.S. within two years prior to the date the application is filed.

**Publication Date:** December 28, 1999  
**Effective Date:** January 1, 2000  
**Expiration Date:** May 30, 2000  
**Hearing Date:** March 13, 2000

## EMERGENCY RULES NOW IN EFFECT (2)

### Gaming Division

1. Rules adopted creating **ch. Game 27**, relating to the conduct of pari-mutuel snowmobile racing.

### Finding of Emergency

The Department of Administration's Division of Gaming finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

In January of 2000 a snowmobile promoter proposes to offer pari-mutuel wagering on snowmobile races conducted in Wisconsin. Section 562.124, Stats., allows for pari-mutuel snowmobile racing with the requirement that the Division of Gaming regulate the racing and promulgate all rules necessary to administer the statutory provision in the statutes.

Since this will be the first occasion within the United States that there will be pari-mutuel wagering on a motor sport or mechanical event, the Division of Gaming took extra time in preparing and reviewing the proposed rules with emphasis and attention directed toward the health, welfare and safety of the participants, workers and the public. Additionally, the Division of Gaming is incorporating standards by reference, specifically the Oval Sprint Racing Rules; Sno-Cross Racing Rules; and the General Competition Rules, excluding Enforcement, Discipline and Violation, of International Snowmobile Racing, Incorporated as identified in the 1999–2000 *ISR Snowmobile Racing Yearbook*. These rules, which were made public in October of 1999 were reviewed extensively, once again with an emphasis on the health, welfare and safety of the prior noted individuals.

The conduct of pari-mutuel snowmobile racing will create additional jobs, increase tourism within the State of Wisconsin and generate revenues for the Division of Gaming.

**Publication Date:** December 23, 1999  
**Effective Date:** December 23, 1999  
**Expiration Date:** May 21, 2000

2. Rule adopted repealing **ch. Game 27**, relating to the conduct of pari-mutuel snowmobile racing, which was created by emergency rule on December 23, 1999.

### Finding of Emergency

Based upon the public opposition to this emergency rule, the Department has reconsidered its creation of ch. Game 27 as an emergency rule. The Department will instead pursue creation of the proposed rule under the permanent rulemaking procedures.

**Publication Date:** January 15, 2000  
**Effective Date:** January 15, 2000  
**Expiration Date:** May 21, 2000

## EMERGENCY RULES NOW IN EFFECT (2)

### Health & Family Services

(Management, Technology, etc., Chs. HFS 1–)

1. A rule was adopted revising **chapter HFS 12 and Appendix A**, relating to caregiver background checks.

### Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Since October 1, 1998, the Department has been implementing ss. 48.685 and 50.065, Stats., effective on that date, that require use of uniform procedures to check the backgrounds of persons who apply to the Department for regulatory approval, to a county social services or human services department that licenses foster homes for children and carries out adoption home studies, to a private child-placing agency that does the same or to a school board that contracts for day care programs, to provide care or treatment to persons who need that care or treatment, or who apply to a regulated entity to be hired or contracted with to provide services to the entity's clients or who propose to reside as a non-client at the entity. The statutes direct the regulatory agencies and regulated entities to bar persons, temporarily or permanently, depending on the conviction or finding, who have in their backgrounds a specified conviction or finding substantially related to the care of clients, from operating a service provider organization, providing care or treatment to persons who need that care or treatment or from otherwise having contact with the clients of a service provider.

To implement the new Caregiver Law, the Department on October 1, 1998, published administrative rules, ch. HFS 12, Wis. Adm. Code, by emergency order. The October 1998 emergency rules were modified in December 1998 and February 1999 by emergency order, and were replaced by permanent rules effective July 1, 1999. On September 12, 1999, the Department issued another emergency order again modifying ch. HFS 12, but only the Crimes List and not the text of the chapter. The number of specified crimes was reduced to 79, with 6 of them, all taken from ss. 48.685 and 50.065, Stats., being crimes that permanently barred persons for all programs. The change to the ch. HFS 12 Crimes List was made at that time because the 1999–2001 Budget Bill, subsequently passed by the Legislature as 1999 Wisconsin Act 9, was expected to provide for a more modest list of crimes than the one that was appended to ch. HFS 12. The more modest crimes list published by an emergency rulemaking order on September 12, 1999 reflected the Legislature's intent that some persons who under the previous rules would lose their jobs effective October 1, 1999, were able to keep their jobs.

The 1999–2001 Biennial Budget Act, 1999 Wisconsin Act 9, made several changes to ss. 48.685 and 50.065, Stats., the Caregiver Law. These changes were effective on October 29, 1999. The Department's current rules, effective July 1, 1999, as amended on September 16, 1999, have been in large part made obsolete by those statutory changes. Consequently, the Department through this order is repealing and recreating ch. HFS 12 to bring its rules for operation of the Caregiver Law into conformity with the revised statutes. This

is being done as quickly as possible by emergency order to remove public confusion resulting from administrative rules, which have been widely relied upon by the public for understanding the operation of the Caregiver Law, that are now in conflict with current statutes.

The revised rules minimize repetition of ss. 48.685 and 50.065, Stats., and are designed to supplement those statutes by providing guidance on:

- Sanctions associated with the acts committed under the Caregiver Law;
- Determining whether an offense is substantially related to client care;
- Reporting responsibilities; and
- The conduct of rehabilitation review.

**Publication Date:** February 12, 2000

**Effective Date:** February 13, 2000

**Expiration Date:** July 12, 2000

**Hearing Date:** April 13, 2000

2. Rules adopted creating **ch. HFS 10**, relating to family care.

## Exemption From Finding of Emergency

The Legislature in s. 9123 (1) of 1999 Wis. Act 9 directed the Department to promulgate rules required under ss. 46.286 (4) to (7), 46.288 (1) to (3) and 50.02 (2) (d), Stats., as created by 1999 Wis. Act 9, but exempted the Department from the requirement under s. 227.24 (1) and (3), Stats., to make a finding of emergency.

## Analysis Prepared by the Department of Health and Family Services

Legislation establishing a flexible Family Care benefit to help arrange or finance long-term care services to older people and adults with physical or developmental disabilities was enacted as part of 1999 Wis. Act 9. The benefit is an entitlement for those who meet established criteria. It may be accessed only through enrollment in Care Management Organizations (CMOs) that meet requirements specified in the legislation.

The Act also authorizes the Department of Health and Family Services to contract with Aging and Disability Resource Centers to provide broad information and assistance services, long-term care counseling, determinations of functional and financial eligibility for the Family Care benefit, assistance in enrolling in a Care Management Organization if the person chooses to do so, and eligibility determination for certain other benefits, including Medicaid, and other services.

Until July 1, 2001, the Department of Health and Family Services is authorized to contract with CMOs and Resource Centers in pilot counties to serve up to 29% of the state's eligible population. Further expansion is possible only with the explicit authorization of the Governor and the Legislature.

When Aging and Disability Resource Centers become available in a county, the legislation requires nursing homes, community-based residential facilities, adult family homes and residential care apartment complexes to provide certain information to prospective residents and to refer them to the Resource Center. Penalties are provided for non-compliance.

These proposed rules interpret this new legislation, the main body of which is in newly enacted ss. 46.2805 to 46.2895, Stats. The Department of Health and Family Services is specifically directed to promulgate rules by ss. 46.286 (4) to (7), 46.288 (1) to (3), 50.02 (2) (d) and 50.36 (2) (c), Stats. Non-statutory provisions in section 9123 of 1999 Wis. Act 9 require that the rules are to be promulgated using emergency rulemaking procedures and exempts the Department from the requirements under s. 227.24 (1) (a), (2) (b) and (3) of the Stats., to make a finding of emergency. These are the rules required under the provisions cited above, together with

related rules intended to clarify and implement other provisions of the Family Care legislation that are within the scope of the Department's authority. The rules address the following:

- Contracting procedures and performance standards for Aging and Disability Resource Centers.
- Application procedures and eligibility and entitlement criteria for the Family Care benefit.
- Description of the Family Care benefit that provides a wide range of long-term care services.
- Certification and contracting procedures for Care Management Organizations.
- Certification and performance standards and operational requirements for CMOs.
- Protection of client rights, including notification and due process requirements, complaint, grievance, Department review, and fair hearing processes.
- Recovery of incorrectly and correctly paid benefits.
- Requirements of hospitals, long-term care facilities and Resource Centers related to referral and counseling about long-term care options.

**Publication Date:** February 1, 2000

**Effective Date:** February 1, 2000

**Expiration Date:** June 30, 2000

**Hearing Dates:** April 25, & 27, May 2, 4 & 8, 2000

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## EMERGENCY RULES NOW IN EFFECT

### Health & Family Services

#### (Community Services, Chs. HFS 30-)

Rules adopted revising **ch. HFS 50**, relating to adoption assistance programs.

### Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

This rulemaking order amends ch. HFS 50, the Department's rules for facilitating the adoption of children with special needs, to implement changes to the adoption assistance program statute, s. 48.975, Stats., made by 1997 Wisconsin Act 308. Those changes include permitting a written agreement for adoption assistance to be made following an adoption, but only in "extenuating circumstances;" permitting the amendment of an adoption assistance agreement for up to one year to increase the amount of adoption assistance for maintenance when there is a "substantial change in circumstances;" and requiring the Department to annually review the circumstances of the child when the original agreement has been amended because of a substantial change in circumstances, with the object of amending the agreement again to either continue the increase or to decrease the amount of adoption assistance if the substantial change in circumstances no longer exists. The monthly adoption assistance payment cannot be less than the amount in the original agreement, unless agreed to by all parties.

The amended rules are being published by emergency order so that adoption assistance or the higher adoption assistance payments, to which adoptive parents are entitled because of "extenuating circumstances" or a "substantial change in circumstances" under the statutory changes that were effective on January 1, 1999, may be made available to them at this time, now that the rules have been developed, rather than 7 to 9 months later which is how long the promulgation process takes for permanent rules. Act 308 directs the Department to promulgate rules that, among other things, define

extenuating circumstances, a child with special needs and substantial change in circumstances.

**Publication Date:** November 16, 1999  
**Effective Date:** November 16, 1999  
**Expiration Date:** April 13, 2000  
**Hearing Dates:** February 24, & 28, 2000  
**Extension Through:** June 11, 2000

## EMERGENCY RULES NOW IN EFFECT (2)

### Health & Family Services

(Medical Assistance, Chs. HFS 101–108)

1. Rules adopted creating ss. **HFS 106.12 (9) and 108.02 (9)(f)**, relating to discovery rights in contested case proceeding involving health care providers under the MA program.

### Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

In Wisconsin, contested case proceedings for which state agencies must hold administrative hearings are by statute divided into three categories. Class 1 cases involve situations in which the agency has substantial discretionary authority (such as rate setting or the grant or denial of a license) but no imposition of a sanction or penalty is involved; Class 2 contested cases involve the imposition of a sanction or penalty; and Class 3 cases are those not included in Class 1 or Class 2. Under s. 227.45(7), Stats., in a Class 2 proceeding the parties have an automatic right to take and preserve evidence prior to the hearing by using discovery procedures such as depositions and interrogatories, but in a Class 1 or Class 3 proceeding the parties generally do not have the right to use discovery unless rules of the agency specifically provide for that right.

The Department of Health and Family Services does not have rules providing for discovery in a Class 1 or Class 3 contested case. Accordingly, discovery has not been available for Class 1 or Class 3 cases except with respect to certain witnesses identified in s. 227.45 (7), Stats. The Department of Administration's Division of Hearings and Appeals handles cases delegated from this Department. Recently, a hearing examiner in the Division of Hearings and Appeals issued an order in a Class 3 case which held that, because the Division of Hearings and Appeals has its own rules allowing discovery in all cases, those rules override the absence of any mention of discovery in the Department of Health and Family Services' rules concerning hearing rights and procedures.

This Department believes that an emergency exists. If other hearing examiners issue similar rulings, the Department of Health and Family Services would be subject to discovery in all cases. This means that in the absence of Department rules that provide otherwise, the process of litigation for Class 1 and Class 3 cases would be significantly prolonged for all parties and the additional administrative costs to the Department associated with that process (including the need to hire additional program staff, attorneys, and support staff to handle the depositions, interrogatories, and other discovery procedures) would be considerable.

There is a particularly high volume of Class 1 and Class 3 cases involving Medical Assistance program providers. Accordingly, these rules are issued to make clear that discovery remains unavailable in Class 1 and Class 3 Medical Assistance contested case proceedings involving providers.

**Publication Date:** December 23, 1999  
**Effective Date:** December 23, 1999\*  
**Expiration Date:** May 21, 2000  
**Hearing Date:** March 8, 2000

\*On January 20, 2000, the Joint Committee for Review for Administrative Rules suspended these emergency rules under s. 227.19 (4) (d)1., Stats.

2. Rules adopted revising chs. **HFS 102, 103 and 108**, relating to the medicaid purchase plan.

### Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

This order creates rules that specify the manner in which a new program called the Medicaid Purchase Plan, established under s. 49.472, Stats., as created by 1999 Wis. Act 9, will operate. Under the Medicaid Purchase Plan, working adults with disabilities whose family net income is less than 250% of the poverty line are eligible to purchase Medical Assistance, the name given to Medicaid in Wisconsin, on a sliding-fee scale. The order incorporates the rules for operation of the Medicaid Purchase Plan into chs. HFS 101 to 103 and 108, four of the Department's chapters of rules for operation of the Medical Assistance program.

The Medicaid Purchase Plan is projected to provide health care coverage to 1,200 Wisconsin residents with disabilities by the end of Fiscal Year 2001.

Health care coverage under the Medicaid Purchase Plan is identical to the comprehensive package of services provided by Medical Assistance. Individuals enrolled in the Medicaid Purchase Plan would also be eligible for Wisconsin's home and community-based waivers under s. 46.27, Stats., provided they meet the functional criteria for these waivers.

Department rules for the operation of the Medicaid Purchase Plan must be in effect before the Medicaid Purchase Plan may begin. The program statute, s. 49.472, Stats., as created by Act 9, effective October 27, 1999, states that the Department is to implement the Medical Assistance eligibility expansion under this section not later than January 1, 2000, or 3 months after full federal approval, whichever is later. Full federal approval was received on January 7, 2000. The Department is publishing the rules by emergency order with an effective date of March 15, 2000 to meet the expected program implementation date and the legislative intent in order to provide health care coverage as quickly as possible to working people with disabilities.

The rules created and amended by this order modify the current Medical Assistance rules to accommodate the Medicaid Purchase Plan and in the process provide more specificity than s. 49.472, Stats., as created by Act 9, regarding the non-financial and financial conditions of eligibility for individuals under the Medicaid Purchase Plan; define whose income is used when determining eligibility and the monthly premium amount; explain statutory conditions for continuing eligibility; explain how the monthly premium amount is calculated; describe the processes associated with the independence account; and set forth how the Department, in addition to providing Medical Assistance coverage, is to purchase group health coverage offered by the employer of an eligible individual or an ineligible family member of an eligible member for the Medicaid Purchase

Plan if the Department determines that purchasing that coverage would not cost more than providing Medical Assistance coverage.

**Publication Date:** March 15, 2000  
**Effective Date:** March 15, 2000  
**Expiration Date:** August 12, 2000

## **EMERGENCY RULES NOW IN EFFECT**

### ***Natural Resources***

**(Environmental Protection – General,  
Chs. NR 100–)**

Rules adopted creating **ch. NR 195**, relating to establishing river protection grants.

#### **Finding of Emergency**

The department of natural resources finds that an emergency exists and a rule is necessary for the immediate preservation of the public health, safety or welfare. The facts constituting the emergency are:

These grants are funded from a \$300,000 annual appropriation that lapses into other programs at the end of each fiscal year. Due to delays in approving the biennial budget, there is not enough time remaining in the current fiscal year to develop a permanent rule, following standard procedures, to allow grants to be awarded with the current fiscal year appropriation. Potential river protection grant sponsors have been anticipating these grants and are ready to apply and make use of these funds. An emergency order will prevent the loss of \$300,000 for protecting rivers that the legislature clearly intended to make available to these organizations. Initiating this much-anticipated program through emergency order, while permanent rules are being developed, is a positive step toward successful implementation.

**Publication Date:** February 17, 2000  
**Effective Date:** February 17, 2000  
**Expiration Date:** July 16, 2000  
**Hearing Dates:** March 16, 17, 21 & 22, 2000

## **EMERGENCY RULES NOW IN EFFECT**

### ***Natural Resources***

**(Environmental Protection–Investigation and  
Remediation, Chs. NR 700–)**

Rules adopted creating **ch. NR 746**, relating to sites contaminated with petroleum products from petroleum storage tanks.

#### **Finding of Emergency**

The Wisconsin Natural Resources Board finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts contributing to the emergency is:

The Department of Commerce has adopted administrative rules under ss. 101.143 and 101.144, Stats., to implement the Petroleum Environmental Cleanup Fund Act (PECFA). The purpose of PECFA is to reimburse responsible persons for the eligible costs incurred to investigate and remediate petroleum product discharges from a petroleum product storage system or home oil tank system.

The recent emergency rule, ch. Comm 46, was adopted by both the Department of Natural Resources and the Department of Commerce in January 1999, incorporating parts of a Memorandum of Understanding between the two agencies that relates to the classification of contaminated sites and creating risk screening criteria for assessing petroleum-contaminated sites. However, ch. Comm 46 expired on September 27, 1999, prior to publication of the permanent rule. The emergency rule, ch. NR 746, is being proposed in order to ensure rules continue in effect during the time period between now and when the permanent rule is published. This action is also in response to a resolution adopted by the Joint Committee for Review of Administrative Rules (JCRAR), which directed the Department of Commerce and the Department of Natural Resources to promulgate a new emergency rule for this interim time period.

The emergency rule was approved and adopted by the State of Wisconsin Natural Resources Board on September 29, 1999.

**Publication Date:** October 20, 1999  
**Effective Date:** October 20, 1999  
**Expiration Date:** March 18, 2000  
**Hearing Date:** November 18, 1999  
**Extension Through:** May 16, 2000

## **EMERGENCY RULES NOW IN EFFECT (6)**

### ***Public Instruction***

1. Rules adopted revising **ch. PI 35**, relating to the Milwaukee parental school choice program.

#### **Finding of Emergency**

The Department of Public Instruction finds that an emergency exists and that a rule is necessary for the immediate preservation of the public health, safety or welfare. A statement of the facts constituting the emergency is:

Emergency rules are necessary to clarify the eligibility criteria and requirements for parents and participating private schools in time for schools to properly establish procedures for the 2000–2001 school year. Furthermore, emergency rules are necessary to allow the private schools to begin planning summer school programs. The department is in the process of developing permanent rules, but such rules will not be in place prior to January 2000.

The requirements established under this rule have been discussed with the private schools and initial indications reflect an acceptance of these provisions.

**Publication Date:** January 4, 2000  
**Effective Date:** January 4, 2000  
**Expiration Date:** June 2, 2000  
**Hearing Date:** March 20, 2000

2. Rules adopted creating **ch. PI 10**, relating to supplemental aid for school districts with a large area.

#### **Finding of Emergency**

The Department of Public Instruction finds that an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

1999 Wis. Act 9 appropriated \$125,000 to be awarded by the department to eligible school districts in the 1999–2000 school year. Emergency rules are necessary to clarify the eligibility criteria and procedures for school districts to apply for funds under the program.

The rules contained in this order shall take effect upon publication as emergency rules pursuant to the authority granted by s. 227.24, Stats.

**Publication Date:** January 28, 2000  
**Effective Date:** January 28, 2000  
**Expiration Date:** June 26, 2000  
**Hearing Date:** March 15, 2000

3. Rules adopted creating **ch. PI 24**, relating to state aid for achievement guarantee contracts and aid for debt service.

### Finding of Emergency

The Department of Public Instruction finds that an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

#### State Aid for Achievement Guarantee Contracts:

The department will send SAGE contract information to school districts by mid-February and require proposed contracts to be submitted to the department by April 1, 2000. Emergency rules are necessary to clarify the eligibility criteria and requirements for school districts applying for state aid for achievement guarantee contracts in time for the 2000–2001 school year.

#### Partial Debt Service Reimbursement:

On or after October 29, 1999, a school board must adopt an initial resolution under s. 67.05 (6a), Stats., for issuance of bonds where the purpose for borrowing includes providing funds for classroom expansion necessary to fulfill a contract under s. 118.43, Stats. Emergency rules are necessary to clarify the criteria and procedures for SAGE school districts to receive partial debt service reimbursement for the 2000–2001 school year.

The proposed rules contained in this order shall take effect upon publication as emergency rules pursuant to the authority granted by s. 227.24, Stats.

**Publication Date:** January 28, 2000  
**Effective Date:** January 28, 2000  
**Expiration Date:** June 26, 2000  
**Hearing Date:** March 15, 2000

4. Rules adopted creating **ch. PI 44**, relating to alternative education grants.

### Finding of Emergency

The Department of Public Instruction finds that an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

1999 Wis. Act 9 appropriated \$5,000,000 to be awarded by the department to eligible school districts or consortia of school districts in the 2000–2001 school year. Emergency rules are necessary to clarify the eligibility criteria and procedures for school districts or consortia of school districts to apply for funds under the program.

The rules contained in this order shall take effect upon publication as emergency rules pursuant to the authority granted by s. 227.24, Stats.

**Publication Date:** January 28, 2000  
**Effective Date:** January 28, 2000  
**Expiration Date:** June 26, 2000  
**Hearing Dates:** March 9, 14 & 15, 2000

5. Rules adopted creating **s. PI 6.07**, relating to the public library system aid payment adjustments.

### Finding of Emergency

The Department of Public Instruction finds that an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

In accordance with s. 43.24 (1)(b), Stats., the rules adjust public library aid payments to be consistent with system services areas after territorial changes occur. Using the formula created under the rule, an aid adjustment will be paid by the department in April for a territorial change. Emergency rules must be in place before the formula may be used.

**Publication Date:** March 4, 2000  
**Effective Date:** March 4, 2000  
**Expiration Date:** August 1, 2000

6. Rules adopted revising **ch. PI 32**, relating to grants for alcohol and other drug abuse programs.

### Finding of Emergency

The Department of Public Instruction finds that an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

For the upcoming school year, the department will send grant application materials to school districts in March. Grant applications must be returned to the department in the spring of 2000 and grants will be awarded prior to July 1, 2000. In order for applicants to development proposals and for the state superintendent to review the proposals and make grant awards in time for the 2000–2001 school year, rules must be in place as soon as possible.

**Publication Date:** March 4, 2000  
**Effective Date:** March 4, 2000  
**Expiration Date:** August 1, 2000

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## EMERGENCY RULES NOW IN EFFECT (2)

### Revenue

1. Rule adopted creating **s. Tax 18.08 (4)**, relating to assessment of agricultural land.

### Finding of Emergency

The Wisconsin Department of Revenue finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

1995 Wisconsin Act 27 changed the way agricultural land is valued for property tax purposes. The law requires the Farmland Advisory Council to make recommendations regarding the transition from valuation under prior law to valuation under current law, and requires the department to promulgate rules to implement those recommendations.

On October 18, 1999, the Farmland Advisory Council recommended that agricultural land be assessed as of January 1, 2000 and thereafter according to value in agricultural use. Major Wisconsin farm organizations, among others, have petitioned the Department under s. 227.12, Stats., to promulgate an administrative rule implementing the Council's recommendation.

Since the Department holds assessor schools in November and typically publishes the next years use–value guidelines prior to January 1 of that year, an emergency rule requiring assessment of each parcel of agricultural land according to its value in agricultural

use is necessary for the efficient and timely assessment of agricultural land as of January 1, 2000.

**Publication Date:** November 30, 1999  
**Effective Date:** November 30, 1999  
**Expiration Date:** April 27, 2000  
**Hearing Date:** January 7, 2000

- Rules were adopted revising **ch. WGC 61**, relating to the implementation and maintenance of the retailer performance program of the Wisconsin lottery.

## Finding of Emergency

The Department of Revenue finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Sections 565.02 (4)(g) and 565.10 (14)(b)3m., Stats., as created by 1999 Wis. Act 9, provide for the implementation of a retailer performance program, effective January 1, 2000. The program may be implemented only by the promulgation of rules.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. The retailer performance program is being implemented retroactively to January 1, 2000, pursuant to Section 9443 (1) of 1999 Wis. Act 9.

**Publication Date:** March 3, 2000  
**Effective Date:** March 3, 2000  
**Expiration Date:** July 31, 2000  
**Hearing Date:** May 31, 2000

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## EMERGENCY RULES NOW IN EFFECT

### *Wisconsin Technical College System*

Rules adopted creating **ch. TCS 16**, relating to grants for students.

## Finding of Emergency

The Wisconsin Technical College System (WTCS) Board finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

1999 Wis. Act 9 (the 2000–2001 biennial budget bill) took effect on October 29, 1999. That act created ss. 20.292(1)(ep) and 38.305, Stats. An annual appropriation of \$6,600,000 GPR in the second fiscal year of the 2000–2001 biennium was established. These funds are to be awarded by the WTCS Board as grants to students who are attending a Wisconsin technical college on a full-time basis and who are enrolled in a vocational diploma or associate degree program.

The Act requires the WTCS Board to promulgate rules to implement and administer the awarding of these grants. The Board has begun the permanent rule making process for establishing administrative rules for these student grants, but cannot complete the required public hearing and review of these rules prior to the start of the upcoming school year, which begins on July 1, 2000. Moreover, prospective students evaluate their educational options, including costs, as early as February preceding their graduation from high school. Therefore, for the TOP Grant program to be implemented and the funds distributed to each technical college district, and in turn to each eligible student, in time for the upcoming

school year, emergency administrative rules must be established immediately.

**Publication Date:** February 1, 2000  
**Effective Date:** February 1, 2000  
**Expiration Date:** June 30, 2000  
**Hearing Date:** May 1, 2000

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## EMERGENCY RULES NOW IN EFFECT (2)

### *Transportation*

- Rules adopted revising **ch. Trans 4**, relating to requiring the use of a fully allocated cost methodology when evaluating bids solicited for transit service in a competitive process.

## Exemption From Finding of Emergency

Chapter Trans 4 establishes the Department's administrative interpretation of s. 85.20, Stats. and prescribes administrative policies and procedures for implementing the state urban public transit operating assistance program authorized under s. 85.20, Stats. 1999 Wis. Act 9, section 9150(2bm), requires the Department to adopt an emergency rule to amend Chapter Trans 4 by adding a section that requires that cost proposals submitted by a publicly owned transit system in response to a request for proposals issued by a public body for the procurement of transit services to be funded under the state urban transit operating assistance program must include an analysis of fully allocated costs. The analysis must include all of the publicly owned system's costs, including operating subsidies and capital grants. This analysis shall be the basis for evaluating costs when ranking proposals.

Pursuant to 1999 Wis. Act 9, section 9150(2bm)(b), the Department is not required to provide evidence that the rule is necessary for the preservation of the public peace, health, safety or welfare, and is not required to provide a finding of emergency.

**Publication Date:** December 12, 1999  
**Effective Date:** December 12, 1999  
**Expiration Date:** See 1999 Wis. Act 9, section 9150 (2bm)  
**Hearing Date:** February 14, 2000

- Rule adopted creating **s. Trans 4.09 (4)**, relating to cost-efficiency standards for systems participating in the Urban Mass Transit Operating Assistance program.

## Finding of Emergency

The Department of Transportation finds that an emergency exists and that the rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

1999 Wis. Act 9 specifies that the Department may not enter into a contract for the payment of state aids until cost-efficiency standards have been incorporated into an administrative rule, which is "in effect" for calendar year 2000 contracts, and unless the contract requires the transit system to comply with those rules as a condition of receiving state aid. The Department is promulgating this emergency rule making so that state aid contracts can be executed prior to the scheduled first quarter payment date (March 31) in calendar year 2000 to ensure that payments are not delayed causing undue hardship to Wisconsin municipalities.

**Publication Date:** March 23, 2000  
**Effective Date:** March 23, 2000  
**Expiration Date:** See 1999 Wis. Act 9, section 9150 (2bm)  
**Hearing Date:** April 12, 2000

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**EMERGENCY RULES NOW IN EFFECT****Workforce Development****(Economic Support, Chs. DWD 11–59)**

Rules adopted creating s. DWD 12.28, relating to Wisconsin works disregard of year 2000 census income.

**Finding of Emergency**

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The Department of Workforce Development is acting under its statutory authority to establish additional eligibility criteria and specify how eligibility criteria are to be administered for the Wisconsin Works (W-2) program. The department is promulgating a rule to exclude income earned from temporary employment with the U.S. Census Bureau in determining W-2 and child care eligibility and child care copayments. The rule will contribute to the welfare of the people of Wisconsin by broadening the pool of available workers to help ensure an accurate Census count, particularly in low-income neighborhoods. The rule must be effective immediately because temporary Census employment is expected to begin April 2000 and last two to six months. DWD will not be seeking a permanent rule on this issue.

**Publication Date:** April 9, 2000  
**Effective Date:** April 9, 2000  
**Expiration Date:** September 6, 2000  
**Hearing Date:** May 15, 2000

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**EMERGENCY RULES NOW IN EFFECT****Workforce Development****(Prevailing Wage Rates, Ch. DWD 290–294)**

A rule was adopted revising s. DWD 290.155, relating to the annual adjustment of thresholds for application of the

prevailing wage rates for state or local public works projects.

**Finding of Emergency**

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The Department of Workforce Development is acting under its statutory authority to annually adjust thresholds for the application of prevailing wage laws on state or local public works projects. The thresholds are adjusted in accordance with any change in construction costs since the last adjustment. The last adjustment was by emergency rule in January 1999 based on construction costs in December 1998. The Department uses the construction cost index in the December issue of the Engineering News–Record, a national construction trade publication, to determine the change in construction costs over the previous year. The current construction cost index indicates a 2.3% increase in construction costs over the previous year. This increase in construction costs results in an increase in the threshold for application of the prevailing wage laws from \$33,000 to \$34,000 for single-trade projects and from \$164,000 to \$168,000 for multi-trade projects.

If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six months, until the conclusion of the permanent rule-making process. Between January 1, 2000, and July 1, 2000, a single-trade project with a minimum estimated project cost of more than \$33,000 but less than \$34,000 or a multi-trade project with an estimated cost of more than \$164,000 but less than \$168,000 would not be exempt from the prevailing wage laws, as they would be if the emergency rule were promulgated. The threshold adjustments for application of the prevailing wage laws are based on national construction cost statistics and are unlikely to be changed by the permanent rule-making process. The Department is proceeding with this emergency rule to avoid imposing an additional administrative burden on local governments and state agencies.

**Publication Date:** December 29, 1999  
**Effective Date:** January 1, 2000  
**Expiration Date:** May 30, 2000  
**Hearing Date:** February 28, 2000

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## STATEMENTS OF SCOPE OF PROPOSED RULES

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### *Pharmacy Examining Board*

#### **Subject:**

Phar Code – Relating to the examination pertaining to the consultation of patients.

#### **Description of policy issues:**

##### *Objective of the rule:*

The objective of the rule is to remove the consultation requirement from the examination for licensure and to instead require consultation programs as a part of continuing education. Currently, an applicant for original licensure in this state and pharmacists licensed in another state seeking licensure in this state must successfully pass an examination pertaining to the consultation of patients.

##### *Policy analysis:*

Consulting of patients is a fundamental part of pharmacy practice in this state. Section Phar 7.01 (e) currently requires that a pharmacist provide appropriate consultation as a part of the dispensing process to patients. To achieve the goal of licensing competent pharmacists to provide adequate consultation to patients, the Board has determined that a process of reinforcing the importance of patient consultation plus continuing education is better suited than examination to ensuring pharmacists develop and maintain proper consulting skills throughout their professional careers. Such a policy of continuing education will better serve the health, safety and welfare of patients. Section Phar 16.02 will be amended to require a portion of continuing education specifically directed to consulting of patients.

#### **Statutory authority:**

Sections 15.08 (5) (b), 227.11 (2), 450.02 (2g) (a) and (3) (e), 450.03 (2) and 450.04 (1), Stats.

#### **Estimate of the amount of state employee time and any other resources that will be necessary to develop the rule:**

100 hours.

### *Pharmacy Examining Board*

#### **Subject:**

Phar Code – Relating to collaborative practice of a pharmacist with a practitioner.

#### **Description of policy issues:**

##### *Objective of the rule:*

The objective of the rule is to provide guidelines to pharmacists for the type of activities which they may be delegated by a practitioner that do not conflict with the traditional role of the pharmacist in the health care delivery system. Currently, no standards exist defining what duties may be delegated, the requirements for supervision by a practitioner and the protocols for a validly-delegated task.

##### *Policy analysis:*

As one additional step in assuring positive patient outcomes, and to further eliminate adverse drug events and medication errors, the role of the pharmacist in the delivery of health care services can be expanded. A pharmacist acting under the supervision of a practitioner can carry out delegated tasks from the practitioner pursuant to strict protocols. The traditional role of the pharmacist in prescription drug compounding, dispensing and consultation can be expanded to include:

- Initiating, modifying, and monitoring drug therapy;
- Ordering and performing laboratory tests;

- Assessing patients' responses to therapy;
- Educating and counseling patients; and
- Administering medications in a prearranged collaboration with a practitioner.

Such a policy of pharmacist participation in providing patient care will better serve the health, safety and welfare of patients.

#### **Statutory authority:**

Sections 15.08 (5) (b), 227.11 (2), 450.02 (2) and (3) (e) and 448.03 (2) (e), Stats.

#### **Estimate of the amount of state employee time and any other resources that will be necessary to develop the rule:**

100 hours.

### *Personnel Commission*

#### **Subject:**

SS. PC 1.02 (10) and 1.05 (2) – Relating to the filing and service of documents by fax but not email transmission.

#### **Description of policy issues:**

##### *Objective of the rules:*

The proposed rules provide that in proceedings before the Commission documents may be served and filed by the use of facsimile (fax) machines, but not by the use of email.

##### *Existing policies:*

The existing rules provide at s. PC 1.02 (10) that “‘Filing’ means the physical receipt of a document at the commission’s office.” This rule is unclear as to whether documents can be filed by fax transmission or email. The existing rules also provide at s. PC 1.05 (2) that : “Papers may be served either personally or by mail. Service by mail is complete upon mailing. That is, for purposes of service, the effective date is the date of mailing, not receipt. Filing is complete on receipt.” This rule is unclear as to whether documents can be served or filed by fax transmission or email.

##### *New policies:*

The new rules would explicitly state that filing and service of documents can be effected by the use of fax transmission, but not by email transmission.

##### *Analysis of policy alternatives:*

The alternatives with regard to this subject matter are:

- Continue with the current rules. Because the present rules are somewhat ambiguous, this is not really a substantive alternative.
- Amend the rules to permit service and filing by fax. This would take advantage of current technology and facilitate access to the Commission by a medium that is more expedient than mail and other forms of delivery. Fax transmissions can be more secure than mail in the sense that all fax transmissions generate a receipt, while postal and similar receipts are only generated when a more expensive type of service is used. Also, the statutes now permit filing by fax in judicial proceedings if approved by the local court. However, allowing filing by fax could encourage last minute service and filing, and possibly game playing. There is a possibility of poor document quality. It also shifts the logistical burden for producing documents to the Commission and to the parties that receive fax transmissions. There is also a theoretical possibility that the use of fax would generate disputes (e. g., the commission’s fax machine is not working when someone is trying to submit something) that are more problematical than those that are generated by the current use of more traditional means of document transmittal. However, it is also possible that this kind of dispute would be less problematical than those that currently arise under the use of more traditional means of document transmittal.



- Amend the rules to prohibit filing and service by fax. This involves the obverse of the policy considerations discussed above.

- Amend the rules to permit service and filing by email. This approach involves policy considerations somewhat similar to those raised by the use of fax transmission. In addition, email might be considered less secure than fax transmission because it does not generate a hard copy unless the recipient prints the document. Email is probably more prone to formatting problems during transmission. Email does not transmit a copy of a signature. It is not clear what would be involved by the use of electronic signatures. The court system doesn't seem to have accepted this medium of communication to the extent that the judiciary has accepted fax use.

- Amend the rules to prohibit service and filing by email. This involves the obverse of the policy considerations discussed above.

#### **Statutory authority for rules:**

Sections 227.11 (2) (b) and 230.45 (1) (i), Stats.

#### **Estimates of staff time needed to develop rules and other resources needed to develop rules:**

It is estimated that 40 hours of staff time would be needed to develop the rule. Other resources necessary to develop the rules would be clerical and related expenses of minimal cost.

### ***Personnel Commission***

#### **Subject:**

S. PC 2.01 – Relating to the time limit for filing complaints.

#### **Description of policy issues:**

##### *Objective of the rules:*

The proposed rule amends s. PC 2.01 to explicitly state that complaints under ss. 16.009 (5) (c) 2., 46.90 (4) (b), and 50.07 (3) (a) 2., Stats., are subject to the time limit for filing set forth in s. 111.39 (1), Stats.

##### *Existing policies:*

Existing s. PC 2.01 provides a cross-reference to s. 111.39 (1), Stats., but refers only to complaints under the elder abuse reporting law.

##### *New policies:*

The proposed rule involves no new policy, and is consistent with current statutory provisions.

##### *Analysis of policy alternatives:*

Since s. 230.45 (1) (j), Stats., provides that the Commission shall process complaints under ss. 16.009 (5) (c) 2., 46.90 (4) (b) or 50.07 (3) (a) 2., Stats., “in the same manner that employment discrimination complaints are processed under s. 111.39,” it effectively incorporates by reference the 300 day time limit set forth in s. 111.39 (1), Stats., as to those bases of discrimination. The amendment clarifies that the 300 day time limit applies to complaints under all three subsections.

#### **Statutory authority for rules:**

Sections 227.11 (2) (b) and 230.45 (1) (i), Stats.

#### **Estimates of staff time needed to develop rules and other resources needed to develop rules:**

It is estimated that 10 hours of staff time would be needed to develop the rule. Other resources necessary to develop the rules would be clerical and related expenses of minimal cost.

### ***Personnel Commission***

#### **Subject:**

S. PC 3.02 (4) – Relating to the determination of poverty level.

#### **Description of policy issues:**

##### *Objective of the rules:*

The proposed rule would provide that in cases involving the application of s. PC 3.02 (4) (providing for a hardship exception to the requirement for the payment of fees with respect to certain kinds of appeals) the poverty level is to be determined by measuring the family's income, not just the income of the appellant.

##### *Existing policies:*

The existing rules provide at s. PC 3.02 (4) (b) 1. that the determination of poverty is measured by evaluating the appellant's income and resources under certain provisions of federal law.

##### *New policies:*

The new rules would provide that the determination of poverty is measured by evaluating, under certain provisions of federal law, the income of the appellant and his or her family, if any.

##### *Analysis of policy alternatives:*

The Commission could continue with the current rules, which would be more ambiguous than changing the rule.

#### **Statutory authority for rules:**

Sections 227.11 (2) (b) and 230.45 (1) (i), Stats.

#### **Estimates of staff time needed to develop rules and other resources needed to develop rules:**

It is estimated that 10 hours of staff time would be needed to develop the rule. Other resources necessary to develop the rules would be clerical and related expenses of minimal cost.

### ***Transportation***

#### **Subject:**

Ch. Trans 131 – Relating to operation of the vehicle emission Inspection/Maintenance (I/M) program.

#### **Description of policy issues:**

##### *Description of the objective of the rule:*

Chapter Trans 131 governs operation of the vehicle emission Inspection/Maintenance (I/M) program. DOT proposes to amend the rule to specify testing procedures for On-Board Diagnostic testing (termed OBD II testing).

##### *Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:*

The current primary emission test is a transient tail pipe test, and for those vehicles which cannot perform a transient test, a 2-speed idle test is performed. The test is used to determine compliance with applicable vehicle exhaust emission limitations for carbon monoxide, hydrocarbons, and oxides of nitrogen. The OBD II test will measure and ensure the emission system in the vehicle is performing with established manufacturer's specifications. EPA will soon require states to test via the OBD II test. The Department, with the encouragement of the Department of Natural Resources, will begin OBD II testing in early 2001, with full implementation by mid-2001.

This rule amendment will specify testing procedures and failure criteria for the OBD II method of testing.

#### **Statutory authority for the rule:**

Sections 110.06, 110.20 (9) and 227.11 (2), Stats.

#### **Estimates of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

Approximately 300 hours of staff time including DOT and DNR staff, for development, hearings, and revision of rule draft.

### ***Transportation***

#### **Subject:**

Chs. Trans 251, 269 and 270 – Relating to establishing maximum weights for garbage and refuse, and for recyclable scrap.

**Description of policy issues:***Description of the objective of the rule:*

This proposed rule will amend chs. Trans 251 and 269, and create ch. Trans 270. Chapter Trans 251 currently establishes the same maximum weights allowed for transport of garbage, refuse, and recyclable scrap in s. Trans 251.05. This proposed rule will establish different maximum weights for garbage and refuse, and for recyclable scrap. The proposed maximum vehicle weight for recyclable scrap will be 120,000 pounds with the maximum vehicle weight limited by the number of axles on the vehicle and the distance between those axles. This limitation is typically called "bridge distance." Currently s. Trans 251.05 does not impose "bridge distance" limits on the maximum weight and axle group weights allowed by permit for vehicles up to 150,000 pounds. The weights currently allowed for transportation of garbage and refuse under permit will not be changed.

Chapter Trans 269 currently addresses the overweight transport of garbage and refuse, as provided in s. 348.27 (12), Stats., and recyclable scrap, as provided in s. 348.27 (9r), Stats. In the proposed rule, ch. Trans 269 will address only the overweight transport of garbage and refuse. The proposed rule will also clarify the vehicle equipment requirements for permit eligibility, increase the required insurance, and correct minor technical errors. All references to recyclable scrap will be deleted from ch. Trans 269. The required insurance will be increased from \$750,000 to \$1,000,000 to correspond with the amounts required for vehicles of similar weight authorized by other oversize and overweight administrative rules. Technical amendments would include broadening the eligible vehicle language to parallel other divisible load permits. The definition of "self-compactor equipped vehicle" will be amended and clarified.

Chapter Trans 270 creates a separate rule for the transport of recyclable scrap, as provided in s. 348.27 (9r), Stats. The definition of "recyclable scrap" will be amended and clarified.

*Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:*

Chapter Trans 269 is the only overweight transport rule that addresses loads authorized by two separate statutory provisions. Overweight garbage and refuse loads are authorized by s. 348.27 (12), Stats., and overweight recyclable scrap loads are authorized by s. 348.27 (9r), Stats. This was workable when transport of recyclable scrap was a minor use of the permit. Since approximately 1992, use of this permit for the transportation of recyclable scrap has sharply increased. This has become a serious problem because the permit authorizes exceptionally heavy loads up to 150,000 lbs. and is valid on all local roads. In addition, it is the only permit that does not require maximum vehicle weight to be limited by the number of axles and distance between those axles, known as "bridge distance." Elimination of "bridge distance" as a limiting factor was authorized in order to allow appropriate use of standard garbage trucks (which have an excessively heavy rear due to the compacting unit and short vehicle length) on residential streets. Local authorities have expressed serious concern about the need to curb the growth in transport under this permit in order to conserve roadways and reduce maintenance costs.

The current definition of recyclable scrap is unclear and ambiguous. The Department believes that some motor carriers have unreasonably stretched the interpretation of recyclable scrap in order to justify heavier loads. The Department has provided interpretations as to the meaning of the definition of recyclable scrap, but the definition's ambiguity has resulted in litigation. This will continue unless the definition of recyclable scrap is clarified.

Restricting ch. Trans 269 exclusively to overweight transport of garbage and refuse and creating a new rule for the overweight transport of recyclable scrap would allow the Department to impose different standards for these commodities. This would allow the Department to more effectively limit truck trips at the extraordinary weight of 150,000 pounds on state and local highways.

The definition of "self-compactor equipped vehicle" in s. Trans 269.02 (2) (f) has been difficult to interpret by motor carriers and law enforcement agencies. This definition is ambiguous and should be clarified.

Restricting s. Trans 251.05 exclusively to transport of garbage and refuse and creating a new section in ch. Trans 251 for transport of recyclable scrap would allow the Department to impose different standards for transport of these commodities without compromising the vehicle configuration requirements pertinent to the transport of garbage or refuse.

**Statutory authority for the rule:**

Section 348.25 (3), Stats., grants the Department the authority to promulgate administrative rules relating to the issuance of permits for the transport of overweight and oversize vehicles. Section 348.27 (12), Stats., authorizes the overweight transport of garbage or refuse in compactor-equipped vehicles. Section 348.27 (9r), Stats., authorizes the overweight transport of metallic and non-metallic scrap for the purposes of recycling. Section 348.15, Stats., establishes the maximum weight allowed for vehicles on class A highways. Section 348.16, Stats., establishes the maximum weight allowed for vehicles on class B highways.

**Estimates of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

Approximately 300 hours of staff time will be spent in amending chs. Trans 251 and 269 and in drafting the new ch. Trans 270, meeting with interested officials and industry representatives, and in traveling to or conducting a minimum of two public hearings.

**Transportation****Subject:**

Ch. Trans 276 – Relating to adding a highway segment to the network of highways on which long combination vehicles may operate.

**Description of policy issues:***Description of the objective of the rule:*

This proposal will amend ch. Trans 276, which establishes a network of highways on which long combination vehicles may operate, by adding one highway segment to the network. The actual segment being proposed is State Trunk Highway 55 from USH 41 in Kaukauna to STH 54 south of Seymour.

*Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:*

Federal law requires the Department of Transportation to react within 90 days to requests for changes to the long truck route network. Wisconsin state law requires that the Department use the administrative rule process to deal with changes to the long truck route network. Chapter Trans 276 is an existing rule set up for long truck routes. The Department has received a joint request from Senator Robert Cowles and Rep. John Ainsworth, to add the highway segment.

**Statutory authority for the rule:**

Section 348.07 (4), Stats.

**Estimates of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

It is estimated that state employees will spend 40 hours on the rule-making process, including research, drafting and conducting a public hearing.

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## SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

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### Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse

*Please check the Bulletin of Proceedings for further information on a particular rule.*

#### **Administration**

##### **Rule Submittal Date**

On April 24, 2000, the Wisconsin Department of Administration submitted a proposed rule, ch. Adm 43, Wis. Adm. Code, to the Wisconsin Legislative Council Rules Clearinghouse.

##### **Analysis**

Statutory authority: ss. 16.004 (1) and 16.957 (4) (b), Stats.

Statutes interpreted: ss. 16.957, et seq.

Under s. 16.957 (4) (b), Stats., the Department of Administration is required to promulgate rules establishing the amount of public benefits fees to be collected by certain electric utilities from their customers. These fees are to be paid to the Department in order to fund low-income assistance energy conservation and efficiency, and renewable resource programs statewide. The proposed rule establishes fees that may vary by class of customer, but will be uniform within each class.

##### **Agency Procedure for Promulgation**

A public hearing is required and the Department will hold a public hearing on this rule after the Wisconsin Legislative Council Rules Clearinghouse completes its review. The Division of Energy and Public Benefits is primarily responsible for promulgation of this rule.

##### **Contact Information**

If you have any questions regarding this rule, please contact:

Donna Sorenson  
Dept. of Administration  
Telephone (608) 266–2887

#### **Administration**

##### **Rule Submittal Date**

On April 24, 2000, the Wisconsin Department of Administration submitted a proposed rule, ch. Adm 44, Wis. Adm. Code, to the Wisconsin Legislative Council Rules Clearinghouse.

##### **Analysis**

Statutory authority: ss. 16.004 (1) and 16.957 (2) (c), Stats.

Statute interpreted: s. 16.957 (2) (b), Stats.

Under s. 16.957 (2) (b), Stats., the Department of Administration is required to promulgate rules for energy conservation and efficiency and renewable resource public benefits programs. The proposed rule establishes requirements, procedures and criteria to be followed by program administrators in soliciting and selecting applications for grant funding to be awarded by the Department for energy programs established under s. 16.957 (2) (b), Stats.

##### **Agency Procedure for Promulgation**

A public hearing is required and the Department will hold a public hearing on this rule after the Wisconsin Legislative Council Rules Clearinghouse completes its review. The Division of Energy and Public Benefits is primarily responsible for promulgation of this rule.

#### **Contact Information**

If you have any questions regarding this rule, please contact:

Donna Sorenson  
Department of Administration  
Telephone (608) 266–2887

#### **Administration**

##### **Rule Submittal Date**

On April 24, 2000, the Wisconsin Department of Administration submitted a proposed rule, ch. Adm 45, Wis. Adm. Code, to the Wisconsin Legislative Council Rules Clearinghouse.

##### **Analysis**

Statutory authority: ss. 16.004 (1) and 16.957 (2) (c), Stats.

Statute interpreted: s. 16.957 (2) (a), Stats.

Under s. 16.957 (2) (c), Stats., the Department of Administration is required to promulgate rules for low-income public benefits programs. The proposed rule establishes eligibility and application requirements and procedures for assistance under a low-income public benefits program established under s. 16.957 (2) (a), Stats.

##### **Agency Procedure for Promulgation**

A public hearing is required and the Department will hold a public hearing on this rule after the Wisconsin Legislative Council Rules Clearinghouse completes its review. The Division of Energy and Public Benefits is primarily responsible for promulgation of this rule.

##### **Contact Information**

If you have any questions regarding this rule, please contact:

Donna Sorenson  
Department of Administration  
Telephone (608) 266–2887

#### **Corrections**

##### **Rule Submittal Date**

Notice is hereby given that pursuant to s. 227.14 (4m), Stats., on April 19, 2000, the Wisconsin Department of Corrections submitted a proposed rule, ch. DOC 306, Wis. Adm. Code, to the Wisconsin Legislative Council Rules Clearinghouse.

##### **Analysis**

Statutory authority: ss. 227.11 (2), 302.04, 302.07, 302.08  
and 302.11 (2), Stats.

The subject matter of the proposed ch. DOC 306 relates to security.

##### **Agency Procedure for Promulgation**

A public hearing is required under s. 227.16 (1), Stats., and will be scheduled at a later date. The organizational unit that is primarily responsible for promulgation of the rule is the Division of Adult Institutions.

**Contact Information**

If you have any questions regarding this rule, please contact:

Julie Kane  
Office of Legal Counsel  
Telephone (608) 267-9839

**Health and Family Services****(Medical Assistance, Chs. HFS 100--)****Rule Submittal Date**

On April 28, 2000, the Wisconsin Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

Statutory authority: Sections 49.45 (10) and 49.472 (3) (h), (4) (a) (intro.) and 2. a., 227.11 (2) and 227.24 (1), Stats.

The proposed rule affects chs. HFS 101 to 103 & 108, Wis. Adm. Code, relating to the Medicaid Purchase Plan.

**Reason for rules, intended effects, requirements:**

This order creates rules that specify the manner in which a new program called the Medicaid Purchase Plan, established under s. 49.472, Stats., as created by 1999 Wis. Act 9, will operate. Under the Medicaid Purchase Plan, working adults with disabilities whose family net income is less than 250% of the poverty line are eligible to purchase Medical Assistance, the name given to Medicaid in Wisconsin, on a sliding-fee scale. The order incorporates the rules for operation of the Medicaid Purchase Plan into chs. HFS 101 to 103 and 108, four of the Department's chapters of rules for operation of the Medical Assistance program.

The Medicaid Purchase Plan is projected to provide health care coverage to 1,200 Wisconsin residents with disabilities by the end of Fiscal Year 2001.

Health care coverage under the Medicaid Purchase Plan is identical to the comprehensive package of services provided by Medical Assistance. Persons enrolled in the Medicaid Purchase Plan would also be eligible for Wisconsin's home- and community-based waivers under s. 46.27, Stats., provided they meet the functional criteria for these waivers.

The rules created and amended by this order modify the current Medical Assistance rules to accommodate the Medicaid Purchase Plan and in the process:

- Provide more specificity than s. 49.472, Stats., as created by Act 9, regarding the non-financial and financial conditions of eligibility for persons under the Medicaid Purchase Plan;
- Define whose income is used when determining eligibility and the monthly premium amount;
- Explain statutory conditions for continuing eligibility;
- Explain how the monthly premium amount is calculated;
- Describe the processes associated with the independence account; and
- Set forth how the Department, in addition to providing Medical Assistance coverage, is to purchase group health coverage offered by the employer of an eligible person or an ineligible family member of an eligible member for the Medicaid Purchase Plan, if the Department determines that purchasing that coverage would not cost more than providing Medical Assistance coverage.

**Agency Procedure for Promulgation**

Public hearing under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

**Contact Information**

If you have questions regarding this rule, please contact:

Melissa Wittman  
Office of Strategic Finance  
Telephone (608) 264-9964

**Public Instruction****Rule Submittal Date**

On April 26, 2000, the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule amends chapter PI 14, relating to school district audits.

**Agency Procedure for Promulgation**

A public hearing is required, and public hearings will be scheduled. The Division of Finance and Management is primarily responsible for promulgation of this rule.

**Contact Information**

If you have questions regarding this rule, you may contact:

Thomas Mickelson  
School Finance Auditor  
Telephone (608) 266-3862

**Transportation****Rule Submittal Date**

On May 1, 2000, the Wisconsin Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule affects chapter Trans 142, relating to recreational vehicle dealer trade practices, facilities and records.

**Agency Procedure for Promulgation**

A public hearing is not required. The organizational unit primarily responsible for promulgation of this proposed rule is the Division of Motor Vehicles/Bureau of Vehicle Services.

**Contact Information**

If you have questions regarding this rule, please contact:

Julie A. Johnson, Paralegal  
Dept. of Transportation  
Telephone (608) 266-8810  
FAX: (608) 267-6734

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***NOTICE OF SUBMISSION OF PROPOSED RULES TO THE PRESIDING OFFICER OF EACH HOUSE OF THE LEGISLATURE,  
UNDER S. 227.19, STATS.***

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*Please check the Bulletin of Proceedings for further information on a particular rule.*

**Employee Trust Funds (CR 99–156):**

S. ETF 10.63 – Relating to due dates for ETF programs.

**Health and Family Services (CR 99–28):**

Ch. HFS 75 – Relating to community substance abuse service standards.

**Revenue (CR 00–16):**

Ch. Tax 14 – Relating to homestead credit administrative provisions; qualification for credit; household income and income; property taxes accrued; gross rent and rent constituting property taxes accrued; and marriage, separation or divorce during a claim year.

**Veterans Affairs (CR 00–41):**

SS. VA 2.01 and 12.02 and ch. VA 15 – Relating to the health care aid grant program, to the personal loan program, and to federally–recognized American Indian tribes and bands.

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## ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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*The following administrative rules have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266-7275 for updated information on the effective dates for the listed rules.*

**Commerce (CR 99-139):**

An order affecting ss. Comm 32.24, 32.33 and 32.50, relating to public employee safety and health.  
Effective 07-01-00.

**Corrections (CR 97-14):**

An order affecting ch. DOC 309, relating to inmate visitation.  
Effective 07-01-00.

**Elections Board (CR 99-137):**

An order creating ch. El Bd 7, relating to approval of electronic voting equipment.  
Effective 07-01-00.

**Employee Trust Funds (CR 98-169):**

An order creating s. ETF 10.55, relating to the proper reporting of creditable service, earnings and participating employees of instrumentalities of two or more units of government when the joint instrumentality does not qualify as a separate employer for Wisconsin Retirement System (WRS) purposes.  
Effective 07-01-00.

**Financial Institutions—Securities (CR 00-17):**

An order amending s. DFI-Sec 5.01 (4) (b) and (e), relating to investment adviser representative competency examination grandfathering provisions.  
Effective 06-01-00.

**Psychology Examining Board (CR 99-149):**

An order amending ss. Psy 2.08 and 3.10, relating to reexaminations.  
Effective 06-01-00.

**Public Service Commission (CR 99-131):**

An order repealing and recreating ch. PSC 111, relating to the replacement of advance plans with strategic energy assessments (SEA's) and revision of requirements for Certificates of Public Convenience and Necessity (CPCN's).  
Effective 07-01-00.

**Public Service Commission (CR 99-140):**

An order affecting ch. PSC 4, relating to implementing the Wisconsin Environmental Policy Act (WEPA), concerning the environmental analysis (EA) procedures for proposed actions before the Public Service Commission.  
Effective 07-01-00.

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# *PUBLIC NOTICE*

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## **Public Notice**

### *Dept. of Health and Family Services*

#### *(Medical Assistance Reimbursement of Nursing Homes)*

#### **State of Wisconsin Medicaid Nursing Facility Payment Plan: FY 00-01**

The State of Wisconsin reimburses Medicaid-certified nursing facilities for long-term care and health care services provided to eligible persons under the authority of Title XIX of the federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the Department of Health and Family Services, is called Medical Assistance or Medicaid. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for setting payment rates for nursing facility services covered by the payment system. A plan that describes the nursing home reimbursement system for Wisconsin is now in effect as approved by the federal Health Care Financing Administration (HCFA).

The Department is proposing changes in the methods of payment to nursing homes and, therefore, in the plan describing the nursing home reimbursement system. The changes are effective **July 1, 2000**.

The proposed changes would update the payment system and make various payment-related policy changes. Some of the changes are necessary to implement various budget policies contained in the Wisconsin 1999-2001 Biennial Budget. Some of the changes are technical in nature; some clarify various payment plan provisions.

The estimated increase in annual aggregate expenditures attributable to these changes for nursing homes serving Medicaid residents is approximately \$17,170,800 all funds, (\$10,302,480 FFP), excluding patient liability.

The proposed changes are being implemented to comply with Wisconsin Statutes governing Medicaid payment systems, particularly s. 49.45 (6m), Wis. Stats.

The proposed changes are as follows:

1. Modify the methodology to adjust the reimbursement for nursing homes within the parameters of the 1999-2001 Biennial Budget Bill and to disburse the \$17,170,800 allotted in the bill to a rate increase of 2%. These modifications will include adjustments to the medians used to calculate maximums and per diem increases in Sections 5.400, 5.500 and 5.600, changes in the occupancy percentage used to establish the minimum occupancy standard in Sections 3.030, the inflation and deflation factors in Section 5.300, and targets in Sections 3.000 and 5.000. The over-the-counter drug parameter in Section 5.900 will be updated. The parameters for calculating the capital payment will be moved from Section 3.530 to Section 5.000 and will be updated. Changing references to 1999-2000, 1999, 2000 to 2000-2001, 2000, 2001 for descriptive reasons will be done where necessary.
2. Continue to phase in a new labor region index based on a different set of variables than the old system. Labor regions are used in calculating the direct care maximums.
3. Establish in Section 3.750 an incentive payment for homes with high Medicaid utilization and an atypically high number of private rooms.
4. Change Section 1.300 to state that the 1999 cost report will be used to calculate the rate. Exceptions to this may be for facilities in a start-up or phase-down period per Sections 4.300, 4.400, 4.500 and 4.600 as mentioned in Section 1.302.
5. Change the dates of the definitions of base cost reporting period, common period, and rate payment year in Sections 1.302, 1.303, and 1.314 to reflect the 2000-2001 period.
6. Change the deadline for bed banking in Section 3.060 to June 30, 2000.

7. In Section 3.126 (a), change Adjustment to Maximum to Adjustment to Case Mix, allowing the case mix index for facilities with fifty beds or less for rate setting to have a 20% increase on their case mix index.
8. Create Section 3.790 to allow the Department to pay the Medicaid portion of the cost to facilities that contract for relocation services when the Department has ordered a relocation plan.
9. State in Section 3.500 that donated homes shall be valued at the lesser of fair market or net book value of the last owner.
10. Amend Sections 3.221, 3.253, 3.350, 3.430, 3.534 and 3.610 and to state that, if a facility's occupancy is below the minimum occupancy factor, allowable cost will be the projected cost divided by adjusted patients days times minimum occupancy factor.
11. Change the last sentence in Section 2.253 so that documented management costs may be substituted for reported costs, subject to allowability.
12. Move the definition of minimum occupancy from Section 3.030 to Section 1.317 and change all references to Section 3.030 accordingly.
13. Exclude boilers, air conditioners, condensers and windows from the energy incentive for projects approved or started after July 1, 2000.
14. State in Section 2.220 that residents are not to be charged for laundering of gowns.
15. Change wording in Section 3.523(2) to clarify the determination of lease maximums.
16. Amend Section 3.050 to add a subsection (4) stating that if a facility qualifies a rate adjustment under Section 4.800, licensed beds will be adjusted.
17. Amend eligibility standards under Section 4.800.
18. Change Section 3.040 to state that if a facility's fiscal year end falls between January 1, 2000 and June 30, 2000, its number of beds for rate setting will be the beds for rate used for the July 1, 1999, rate plus beds returned to the license from the bed bank but minus any bed bank deposit made through June 30, 2000. If a facility's fiscal year end falls on or after July 1, 2000, its bed for rate setting will be its licensed bed number at the end of its cost reporting period minus its bed bank balance.
19. Create Section 3.750 and move Sections 3.254 and 3.320 there.
20. Change section 1.800 to indicate that all administrative reviews should be sent to David Lund.
21. Adjust the base allowance, the qualifying Medicaid percentage and the calculation method for the exceptional Medicaid utilization adjustment in Section 3.750.

### ***Copies of the Proposed Changes:***

Copies of the available proposed changes and proposed rates may be obtained free of charge by writing to:

Division of Health Care Financing  
Attn: Nursing Home Medicaid Payment Plan  
P.O. Box 309  
Madison, WI 53701-0309

or by faxing:

James Cobb at (608) 264-7720

The available proposed changes may be reviewed at the main office at any county department of social services or human services.

### ***Written Comments/Meetings:***

Written comments on the proposed changes may be sent to the Division of Health Care Financing, at the above address. The comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 355 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changes based on comments received. There will also be public meetings to seek input on the proposed plan amendment. If you would like to be sent a public meeting notice, please write to the above address. Revisions may also be made in the proposed changes based on comments received at these forums.





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